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U. S. Department of Transportation
RSPA
400 Seventh St., S.W.
Washington, D.C. 20590-0001
Attention: Dockets Unit (DHM-30)

RSPA-98-4952-29

RE: HM-223 ANPRM "Applicability of the
Hazardous Materials Regulations to Loading,
Unloading and Storage"

Dear Sir/Madam:

Elf Atochem North America, Inc. supports DOT's efforts to clarify the applicability of the Hazardous Materials Regulations to facilitate compliance. We agree that at present there is confusion because of overlaps and inconsistencies in the regulatory requirements (DOT, EPA, OSHA, local authorities). This confusion leads to non-compliance and a lack of safety.

You have asked a number of questions regarding loading, unloading, storage, and handling in the ANPRM. The following is our response to the questions.

Loading

1. *At what point is a package offered for "transportation in commerce"? When filled? When a package is selected from inventory? When an offer (oral or written) has been made to a carrier? When a shipping paper has been executed? When the packaging is physically tendered to the carrier? At some other point?*

A hazardous material can be considered as offered for transportation in commerce when it is loaded in the transport vehicle. For certain bulk packagings (tank cars, cargo tanks, portable tanks attached to a chassis/flat-bed) where the packaging is basically the transport vehicle, this would begin at the time the packaging is filled and suitable for transportation (i.e. properly secured, marked/placarded, container in test, etc.). These bulk packages should be under exclusive DOT jurisdiction throughout the transportation cycle (i.e., until residue is completely removed or until the container is no longer suitable for transportation). For non-bulk packages and IBC type packages, they are normally loaded in the transport vehicle at the time they are tendered to the carrier.

2.(a) *If the shipper is a private carrier, should any portion of the transportation, prior to movement onto a public road, be considered transportation in commerce?*

Within the broad definition of ‘transportation’ as used in 49U.S.C., yes. However, if the private carrier is only moving a shipment on private property, they need not be subject to all the provisions of the HMR For example, in this instance the hazard communication requirements of Part 172 should not be required.

(b) If the carrier is a contract or common carrier, should the movement on the shipper’s facility of a transport vehicle containing hazardous material be considered in transportation in commerce, including movement to an on-site storage facility?

Same answer as 2(a).

(c) Should public accessibility to the shipper’s facility have any bearing on whether in-plant movement is regulated?

No. Public access should have no relevance pertaining to jurisdiction. The laws should apply to protect all.

3. (a) *Should the agency continue to regulate the loading of cargo tanks but not other bulk packagings (except where a function relates **directly** to safety during transportation away **from** the loading facility) ?*

The HMR should regulate the filling of ALL bulk packagings especially in the areas related to (1) selection of packaging, (2) filling limits, (3) securement of closures, (4) relief devices, (5) attendance requirements, (6) etc.

(b) Should regulation be limited to loading of cargo tanks or other bulk packaging only where contract or common carrier personnel are involved in the loading?

No. Same as 3(a).

4. (a) *Should the agency regulate the **filling** of non-bulk packagings **beyond functions** that **directly** relate to safety **during** transportation away from the filling facility?*

No. But those functions that effect safety during transportation away from the filling facility will also effect safety at the filling facility before transportation.

*(b) Should regulation be limited to the **loading or filling** of bulk or non-bulk packagings performed by contract or common carrier personnel **only**?*

No. No distinction should be made between the types of carriers.

5. Are there other factors for determining whether **loading** of hazardous materials is ‘incidental’ to transportation in commerce?

Especially for bulk packaging the filling operation (part of loading) until the unloading (including incidental storage and handling) should be subject to the HMR. It would be confusing/counter-productive to declare the filled container not subject to the HMR until it is offered for transportation but yet the filling operation subject to the HMR.

Unloading

1. (a) *Should RSPA continue to regulate rail tank car unloading by consignees?*

Yes, to the extent the material is in authorized packaging and is correctly marked/labelled/placarded. Again this would demonstrate DOT’s authority through the complete transportation cycle, from the time the containers are filled until the time they are fully emptied (unloaded). Most times these packages are put back into the transportation system with a residue (even after unloading). Thus the HMR still needs to regulate the handling and packaging for safety reasons.

(b) *Should RSPA continue to regulate rail tank car unloading by consignees in light of OSHA’s comprehensive worker safety and health **standards**?*

Yes, but the DOT and OSHA should have a memorandum of understanding so it is clear to industry where the **jurisdictional boundaries are drawn.**

(c) *Should RSPA or FM promulgate regulations for the protection of railroad workers while performing work assignments within plant boundaries?*

No comment.

(d) *If RSPA continues to regulate rail tank car unloading by **consigness**, should RSPA only regulate to the extent that the unloading process is begun or, alternatively, completed, within a specified period of time (e.g. within two weeks of delivery to the consignee) ? If so what time frame do you recommend?*

No. Time should not be specified. DOT should regulate until the unloading is complete. If it is necessary to **specify a time limit, it should be related to the expiration of tank and safety device test periods (for example: within twelve months after the expiration date).**

2. *Should RSPA regulate **unloading** for other than tank cars, of non-bulk or bulk packages when **unloading** does not involve a contract or common carrier?*

Yes. DOT should regulate the unloading of bulk packages where the packaging and transport unit are the same. The unloading of non-bulk packages does not need to be regulated. Again, there should be no distinction between contract and common carriage.

3. *Should public accessibility to a consignee's **facility** have any bearing on whether unloading is regulated?*

See 2(c) of loading.

4. *Since a private motor carrier may be both a carrier and consignee, at what point should transportation be considered complete for that carrier? (e.g. When a transport vehicle is **delivered** to the carrier's facility? When it is unloaded?*

What type of carriage or the status of the company should have no bearing on whether a package is "in transportation". The only consideration should be if the package has been unloaded (emptied and cleaned if a bulk packaging).

5. *Are there other factors for determining whether unloading of hazardous materials is "incidental" to transportation in commerce?*

Particularly for bulk packagings, the HMR must be in effect until the residue has been purged from the container.

Storage

1. *Should the storage of a hazardous material on **leased** track, by any person, be regulated under the HMR? Why or why not?*

Yes, to the extent the material is in authorized packaging and is correctly marked/labelled/placarded. Again this would demonstrate DOT's authority through the complete transportation cycle, from the time the container is filled until it is unloaded. Who has ownership of the track and whether the material is currently moving should have no bearing on the DOT's ability to regulate.

2. Should the HMR continue to **apply only** to storage that may occur between the time a hazardous material shipment is offered for transportation to a common, contract, or private carrier and the time the shipment reaches its intended destination and is accepted by the consignee?

No. For bulk packages, the HMR should also apply to incidental storage, i.e. material that has been placed in a container intended and suitable for transportation or to a container that has been transported and delivered to the consignee but not yet unloaded.

3. Should RSPA regulate **only** those hazardous material shipments that are stored while under "active " shipping papers? If so, how should RSPA define "active " shipping papers?

See 2.

4. Are there other factors for determining whether storage of hazardous materials is "incidental" to transportation in commerce?

No.

Handling

1. Which transportation-related activities should be included under the term "**handling**"?

There are a number of transportation related **activities** that can effect the safe transportation of hazardous materials that can be included in the term "handling".

The following are intended as examples and not as an all inclusive list:

- securing of closures
- application of caps/plugs
- connecting/disconnecting of loading/unloading apparatus
- removal of residues
- securing packages (blocking and bracing)
- protection of fittings

2. Which transportation-related **activities**, if any, should be **excluded from** the list of activities that constitute "handling"?

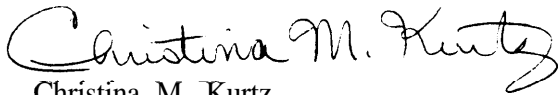
None. See 1.

3. Are there any factors for determining when a hazardous material transportation activity is "**handling**" within the meaning of Federal hazmat **law** and, therefore, **regulated** under the HMR?

Those handling activities that directly effect hazardous materials transportation safety.

Elf Atochem America, Inc. is a large North American chemical manufacturer. We have annual sales in excess of \$ 1.7 Billion and have more that 5,000 employees in North America. We are a memeber of the Elf Atochem S.A. family. Elf Atochem S.A. with headquarters in Paris, France is one of the 10 largest chemical manufacturers in the World. We will be affected by this rulemaking and appreciate the opportunity to comment on it.

Sincerely,

A handwritten signature in cursive script that reads "Christina M. Kurtz".

Christina M. Kurtz
Regulation Analyst
Elf Atochem North America, Inc.